

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

April 21, 2022 at 2:00 p.m.

1. <u>20-90349-E-11</u>	R. MILLENNIUM TRANSPORT,	CONTINUED STATUS CONFERENCE RE:
<u>CAE-1</u>	INC.	VOLUNTARY PETITION
		5-15-20 [1]

<p>The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2022.</p>
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APRIL 21, 2022 STATUS CONFERENCE

The Court overruled the Objections to the Claims of Gina Windorski (POC 2-1) and Jacob Price (3-1). Orders; Dckts. 170, 172.

At the Status Conference, xxxxxxx

JANUARY 27, 2022 STATUS CONFERENCE

On January 26, 2022, the Debtor/Plan Administrator filed an Objection to Proof of Claim 2-1 filed by Gina Windorski. Dckt. 151. The hearing on the Objection to Claim is set for March 24, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that there are several matters to be resolved. The first relates to several claims filed by former employees. Two objections to claim have been filed.

Second, the claim of Fresno Truck Center is at issue. The Parties are working to resolve it. For this creditor, a proof of claim was not filed by the bar date. However, it asserts that its claim was for leases, and by rejection in the plan the bar date runs from that.

The Subchapter V Trustee reports that the Plan is being performed.

The court continues the Status Conference in light of the Subchapter V Trustee continuing the investigation and the U.S. Trustee reviewing the issues and taking such action as appropriate.

April 21, 2022 at 2:00 p.m.

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SEPTEMBER 30, 2021 STATUS CONFERENCE

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period late September 2021 through late November 2021.

At the Status Conference, the Subchapter V Trustee reported that plan payments have been made by Debtor and disbursements on secured claims. No disbursements have been made to unsecured claims. Debtor has obtained a judgment against two creditors.

Also, the claim for several leases relating to the Fresno Truck Center was filed after the Plan was confirmed. Debtor asserts that the Plan allows that.

APRIL 29, 2021 STATUS CONFERENCE

The court Order confirming the Subchapter V Plan in this case was entered on February 11, 2021. Dckt. 133. No post-confirmation status report was filed by the Debtor who administering the confirmed plan.

At the Status Conference, counsel for the Debtor reported that they are working on the mechanics on making the payments under the Plan since not all classes affirmatively voted to accept the Plan.

The Trustee noted that while the Plan does not provide for the Trustee to make the payment, under operation of Subchapter V the Trustee will do so, except for the direct electronic payments already being made pursuant to prior adequate protection orders

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, Chapter 11 Trustee, creditors, and Office of the United States Trustee on November 23, 2021. By the court's calculation, 51 days' notice was provided. The court issued an Order setting the hearing date for January 13, 2022. Order, Dckt. 34.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is XXXXX.
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The Debtor in Possession Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 23, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 23, 2021 Last Day for Submitting Written Acceptances or Rejections

December 23, 2021 Last Day to File Objections to Confirmation

January 6, 2022 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Unimpaired)	For: 0 Against: 0	100%	100%
Class 2 (Impaired)	For: 1 Against: 0	100%	100%
Class 3 (Unimpaired)	For: 0 Against: 0	100%	100%
Class 4 (Impaired)	For: 2 Against: 2	50%	70 %
Class 5 (Impaired)	For: 2 Against: 0	75%	100%

The Declaration of Bridgette Berry filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 48, pg. 1

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Dckt. 48, pg. 2

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Dckt. 48, pg. 2

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. 48, pg. 2

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Dckt. 48, pg. 2

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. 48, pg. 2 & 3

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Dckt. 48, pg. 2 & 3

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. 48, pg. 3

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. 48, pg. 3

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. 48, pg. 3

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Dckt. 48, pg. 3

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. 48, pg. 3

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. 48, pg. 3

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Dckt. 48, pg. 3

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Dckt. 48, pg. 3

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: Dckt. 48, pg. 3

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: Dckt. 48, pg. 3

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence: Dckt. 48, pg. 3

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (I) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: Dckt. 48, pg. 3

(B) With respect to a class of unsecured claims—

- (I) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Dckt. 48, pg. 3

(C) With respect to a class of interests—

- (I) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation

preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 48, pg. 3

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Creditor's Response

On December 14, 2021, Creditor, Korinn Berry, filed a Response to Debtor in Possession's Confirmation of Chapter 11 Plan. Dckt. 40. Creditor requests for an extension on the hearing to vote on a plan because Creditor has not had adequate time to seek out Bankruptcy Counsel. Creditor further states she was not consulted or included in the decision making process of this plan and has not received adequate time to review the books of the business. Creditor has a thirty-three percent (33.3%) equal ownership stake in the business. The other equal shares are thirty-three percent (33.3%) to Bridgette Berry (ex-wife) and thirty-three percent (33.3%) to Becky Berry (Bridgette's Mother).

Creditor's Opposition

On December 23, 2021, Creditors, Gustavo Navarro, Federico Ramirez, and Sylvia Navarro, Objected to Debtor in Possession's Confirmation of Chapter 11 Plan. Dckt. 45. Creditors hold Class 4, non-priority unsecured claims totaling \$56,379.00. The Creditors object to the confirmation of this Plan because the Plan proposes to pay Creditors and other unsecured creditors at a thirty percent (30%) dividend over the next five years. Creditors further state there is no rational basis or reason why that number should not be one hundred percent (100%) if the business improves in the future. The Creditors further contend the Projected Post-Confirmation Cash Receipts, attached as Exhibit A, is not entirely accurate because it only provides for six months when it should provide for three or five years.

Debtor in Possession's Response

On January 6, 2022, Debtor in Possession filed Bridgette Berry's, the responsible representative of the Debtor in Possession, Declaration In Support of the Chapter 11 Plan. Dckt. 48. In the Declaration Debtor addresses the concerns raised by both Creditors in Paragraphs 20 and 21.

Addressing the first Creditor, Korinn Berry, Debtor states she disagrees with Creditor's accusation Creditor has been denied access to financial records. However, Debtor in Possession is not opposed to a continuance and has provided Creditor with the log in information for Quick Books to review financial information.

Addressing the other Creditors, Gustavo Navarro, Federico Ramirez, and Sylvia Navarro, concerns, Debtor stipulates she has prepared five year projections but has not had the ability to review with the Debtor's attorney. Granting the continuance requested by Korinn Berry will allow for such review to take place. Debtor further states specific repairs to the kitchen must be completed in order for the business to sell coffee. Additionally, the present plan is to sell pre-packaged snacks with basic coffee in addition to the rotation food trucks which come to the taproom.

Further, marketing is extremely expensive because the last Yelp advertising cost was \$600.00, which only generated twenty (20) hits on the business's Yelp page. The Debtor clarifies the confusion revolving around the three different addresses for the business. One address is for the cold storage to store the beer, another for the taproom to sell the beer, and the last one is where the brewing process takes place. Lastly, Debtor does intend to substantially increase the dividend on Class 4 claims and will know the payment schedule and dividend within the next week.

Continuance

The Subchapter V Trustee stated that Korinn Berry's correspondence to the court is in the nature of an alternative plan. Counsel for Creditors Ramirez and Navarro, said that they are reviewing a proposed 60% dividend.

At the hearing, the parties agreed to a continuance to allow for discovery and further discussions. The hearing is continued to 2:00 p.m. on March 10, 2022.

MARCH 10, 2022 HEARING

As of the court's March 7, 2022 review of the Docket, nothing further had been filed by the Debtor/Debtor in Possession or other party in interest. The court addressed the evidence presented and issues raised. The parties discussed increasing the dividend to creditors holding general unsecured claims to sixty percent (60%) from thirty percent (30%). Korinn Berry expressed her concerns in the case, but has not obtained bankruptcy counsel and has not yet filed an objection to confirmation.

APRIL 8, 2022 CREDITOR REPLY

On April 8, 2022, Creditor Korinn Berry filed a reply stating that she would be willing to agree to confirmation of Plan if it contained the following amendment (which Korinn Berry states she believes are very reasonable):

1. Creditor Korinn is willing to contribute \$10,000.00 to the reorganization, if the other two partners each contribute an additional \$10,000.00.
2. Creditor Korinn does not agree with the terms of the Plan to have ownership of the reorganized Debtor to be 50/50 and be owned by Beck Berry and Bridgette Berry.
3. For the SBA Loan, Creditor Korrin states that all three of the pre-petition shareholders have liens on their homes to secure that claim.

Dckt. 23. Creditor Berry then states that she “leaves it to the judge” to determine whether such amendments are proper, indicating that there is no agreement for any of the amendments.

APRIL 21, 2022 HEARING

In looking at the file the court notes that the following monthly operating reports were filed by the Debtor/Debtor in Possession:

1. December 2021 Monthly Operating Report (Dckt. 75) – Due January 14, 2022
 - a. Filed.....April 13, 2022
 - b. Net Cash Flow for Month.....(\$1,906)
 - c. Professional Fees Paid since filing the case.....\$1,625
2. January 2022 Monthly Operating Report (Dckt. 73) --Due February 14, 2022
 - a. Filed.....April 13, 2022
 - b. Net Cash Flow for Month.....\$138
 - c. Professional Fees Paid since filing the case.....\$2,025
3. February 2022 Monthly Operating Report (Dckt. 74) – Due March 14, 2022
 - a. Filed.....April 13, 2022
 - b. Net Cash Flow for Month.....\$2,414.00
 - c. Professional Fees Paid since filing the case.....\$2,025
4. March 2022 Monthly Operating Report (Dckt. 76) – Due April 14, 2022
 - a. Filed.....April 13, 2022
 - b. Net Cash Flow for Month.....\$719.00
 - c. Professional Fees Paid since filing the case.....\$2,525

With respect to the Professional Fees paid in the amount of \$2,525 since this case was filed, the information on the Monthly Profit and Loss Statement with each Monthly Operating Report identifies them as:

1. December 2021 (Dckt. 75 at 5)
 - a. Legal & Professional Services.....\$300.00

- b. On the Debtor/Debtor in Possession disbursement register the payment is for
 - (1) Priest Amistadi CPA Services, \$300. (Dckt. 75 at 6).
2. January 2022 (Dckt. 73 at 5)
 - a. Legal & Professional Services.....\$400.00
 - b. On the Debtor/Debtor in Possession disbursement register the payment is for
 - (1) Priest Amistadi CPA Services, \$500. (Dckt. 73 at 9).
3. February 2022 (Dckt. 74 at 5)
 - a. Legal & Professional Services.....\$0.00
4. March 2022 (Dckt. 76 at 5)
 - a. Legal & Professional Services.....\$500.00
 - b. On the Debtor disbursement register the payment is for
 - (1) Priest Amistadi CPA Services, \$500. (Dckt. 76 at 7).

The above payments to the CPA accounts for \$1,200 of the \$2,525 in professional fees paid.

The Debtor/Debtor in Possession earlier filed set of four Monthly Operating Reports filed in January 2022, the Legal & Professional Fees paid are identified as:

1. August 2021 Monthly Operating Report filed on January 11, 2022
 - a. \$750.00 (Dckt. 51 at 12,10); LJC LegalZoom.com
2. September 2021 Monthly Operating Report filed on January 11, 2022
 - a. \$200.00 (Dckt. 52 at 14, 8); Priest Amistadi CPA Services.
3. October 2021 Monthly Operating Report filed on January 11, 2022
 - a. \$375.00 (Dckt. 53 at 11, 9); Priest Amistadi CPA Services.

4. November 2021 Monthly Operating Report filed on January 11, 2022

a. None (Dckt. 54).

In reviewing the file in this case, the court cannot find an order authorizing the employment of the CPA or order authorizing the payment of fees. It is not clear from the Monthly Operating Report why LZC LegalZoom.com was paid \$750.00 on August 25, 2021, seven days after this bankruptcy case was filed.

At the hearing xxxxxxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 11 Plan filed by MoBrewz, LLC (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Confirmation of Plan of Reorganization is
xxxxx.

The Status Conference is XXXXXXXX

APRIL 21, 2022 STATUS CONFERENCE

At the Status Conference, **XXXXXXX**

JANUARY 13, 2022 STATUS CONFERENCE

The status conference is continued to be conducted in conjunction with the continued Confirmation Hearing.

DECEMBER 2, 2021 STATUS CONFERENCE

On November 16, 2021, the Debtor/Debtor in Possession filed a Chapter 11 Small Business Plan. The Plan terms state that the Class 1 priority claims, and the Class 2 and Class 3 secured claims, on the terms of the loan documents, will be paid in full. For general unsecured claims a 30% dividend or \$1,500 a month for 60 months, whichever occurs first. Dckt. 33. The confirmation hearing for the Chapter 11 Plan is set for 2:00 p.m. on January 13, 2022. Dckt. 34.

The Debtor/Debtor in Possession filed a Status Report on November 26, 2021 (Dckt. 37) confirming that the plan, notice of confirmation hearing, and related documents have been sent.

SEPTEMBER 30, 2021 STATUS CONFERENCE

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period from late September 2021 through late November 2021.

The Debtor/Debtor in Possession filed a Status Report on September 17, 2021. Dckt. 22. In it the Debtor/Debtor in Possession recounts the current status of the business and the difficulties in updating the facilities and getting the business open due to COVID-19 issues.

It is projected in the Report that the Debtor/Debtor in Possession will have a Chapter 11 plan filed on or before November 15, 2021, which is the 90th day after the filing of the Plan. Given counsel for the Debtor/Debtor in Possession disruption of his legal practice, such appears to be in question.

The Trustee's report of the First Meeting of Creditors states that the Debtor/Debtor in Possession appeared and counsel for the Debtor/Debtor in Possession appeared at the Meeting on September 22, 2021. September 23, 2021 Trustee Docket Entry Report. The First Meeting has been continued to October 7, 2021.

At the Status Conference, the Subchapter V Trustee reported that the Meeting of Creditors has been conducted. An issue exists whether Debtor can obtain the additional capital.

The U.S. Trustee has a continued 341 Meeting scheduled for next week.

5. [21-90484-E-11](#) **TWISTED OAK WINERY, LLC** **CONFIRMATION OF AMENDED PLAN
OF REORGANIZATION FILED BY
DEBTOR**
2-28-22 [72]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Though Oppositions have been filed, the court cannot locate a Certificate of Service having been filed by the Debtor/Debtor in Possession documenting service having been made by the Debtor/Debtor in Possession

~~Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, 202x. By the court's calculation, xx days' notice was provided. 42 days' notice is required.~~

~~The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).~~

The Confirmation of Plan of Reorganization is XXXXX.
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The Plan Proponent has **not** complied with the Service and Filing Requirements for Confirmation:

March 4, 2022 Plan to be served along with a copy of the February 28, 2022 court Order Setting Hearing and Related Deadlines (Dckt. 73), a ballot for voting, a copy of a notice confirmation hearing on the trustee, United States Trustee, and all creditors and other parties in interest.

Within Three Days of the above service, a certificate of service shall be filed demonstrating compliance. No such Proof of Service has been filed. At the hearing, **XXXXXXXXXX**

April 4, 2022 Last Day to File Objections to Confirmation

April 14, 2022 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Treatment of Claims

Creditor/Class	Treatment	
Class 1: None	Claim Amount	
	Impairment	Not Impaired. Debtor does not anticipate any Priority Claims.
	If there is a Priority Claim allowed, Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan or the date which such claim is allowed by a final non-appealable order.	
Class 2: Mechanics Bank	Claim Amount	\$2,540,119.29
	Impairment	<p>Class 2 is impaired.</p> <p>Mechanics Bank shall retain its security interest according to the instruments and statutes creating same.</p> <p>Mechanics Bank's principal shall be paid in full with interest of 4.50% per annum on 25 years amortization with a January 1, 2033 maturity date.</p> <p>Interest and principal payments are \$10,577 per month, commencing October 1, 2022 for 123 months and then a balloon payment for the remaining balance due on January 1, 2033.</p> <p>Mechanics Bank's pre-petition interest shall be paid in full with 0% interest per annum in the amount of \$1,000 per month, commencing October 1, 2022, then a balloon payment for the remaining balance due on January 1, 2033.</p>

Class 3: U.S. Small Business Administration	Claim Amount	\$157,119.86
	Impairment	Class 3 is unimpaired by the plan.
Class 4: Non-Insider Non- Priority Unsecured Claims, Stange/Metate	Claim Amount	
	Impairment	<p>Class 4 is unimpaired by the plan.</p> <p>Creditor Stange/Metete is the only creditor in Class 4 and their claim is disputed. If Stange/Metete has an allowed claim, they are to be paid as follows:</p> <p>Stange/Mesete's claim must first be offset against any claim or recovery of Debtor. If there is no recovery of Debtor, in equal installments beginning July 1, 2022 for a period of six (6) months.</p>
Class 5: Insider Non-Priority Unsecured Claims	Claim Amount	
	Impairment	<p>Class 5 is unimpaired by the plan.</p> <p>Class 5 will only be paid if all other allowed claims have been paid in full on such terms Debtor and class 5 agree on.</p>
Class 6: Equity Interests	Claim Amount	
	Impairment	Equity Holders are unimpaired and retain current membership interest in Debtor.

Debtor states in their plan there are no known Priority Claims. However, the Internal Revenue Service has filed a priority claim in the amount of \$2,016.45 unsecured priority claims and \$200.00 in unsecured general claims. This is estimated as returns for numerous tax periods have not been filed: December 2019; September 30, 2021; and December 31, 2021. See Proof of Claim 3-1.

Creditor's Objection

February 28, 2022, Creditor Mechanics Bank filed an Objection to Confirmation (Dckt. 74) stating:

1. Debtor did not obtain an Order extending the time to confirm a Small Business Plan outside of forty-five days.
2. The case should be converted the Chapter 7 liquidation.
3. The Second Amended Plan is not fair and equitable because:
 - a. The Note and Commercial Guaranties are in almost three (3) years of default.
 - b. Debtor's sole manager receives \$10,000.00 per month in rent from Debtor but Creditor has not received anything in almost three (3) years.
 - c. The Debtor has filed a series of proposed plans.
 - d. The plan forces Creditor to accept an interest rate of 3.75% which is far below the current lending market.
 - e. The Plan is devoid of any reference to Debtor's principals and Guarantors of the Note and ability to contribute to the Plan.
 - f. The Plan continues to use Creditor's cash collateral over Creditor's objection when Debtor has made no monthly adequate protection payments to Creditor.

Dckt. 74.

United States Trustee's Objection

The United States Trustee filed an objection on April 4, 2022 (Dckt. 85) stating:

1. The Plan improperly terminates Trustee's duties if it is confirmed non-consensually. Trustee states the court should not confirm the Plan unless it is amended to remove any such language.
2. The Debtor has not filed a proof of service evidencing compliance with the proof of service requirement under Federal Rules of Bankruptcy Procedure 2002(b).

Creditor's Supplemental Objection

Creditor Mechanics Bank filed a supplemental objection on April 14, 2022 "confirming its objection" as set forth in its previous objection under Docket No. 74. Dckt. 87.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Here, there has been no notice of hearing as required by the court's February 28, 2022 Order. Dckt. 73. There has been no certificate of service evidencing a copy of the Third Amended Subchapter V Plan, a ballot for voting on the Subchapter V Plan, and a copy of a notice of confirmation hearing on the case trustee, or standing trustee, the United States Trustee, and all creditors and other parties of interest has been served. Additionally, there has been no copies of ballots or ballot tabulation filed with the court at least seven (7) days prior to the hearing, as required by the February 28, 2022 Order.

It appears to the court that no further action has been taken on behalf of Debtor or their Counsel after they filed their February 28, 2022 Plan. Debtor has not complied with the Order (Dckt. 73) to ensure equitable and efficient confirmation and has clearly not been actively prosecuting this case. The court denies confirmation

~~The Plan is not confirmed, and the Motion is denied. ———~~

~~The court shall issue an order substantially in the following form holding that:~~

~~———— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~———— The Motion to Confirm the Chapter 11 Subchapter V Plan filed by Twisted Oak Winery, LLC ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~———— **IT IS ORDERED** that Motion to Confirm is denied, and the proposed Chapter 12 Plan is not confirmed.~~

The Status Conference is continued to XXXXXXX , 2022

APRIL 21, 2022 STATUS CONFERENCE

At the Status Conference, XXXXXXX

MARCH 24, 2022 STATUS CONFERENCE

The court has issued an order resetting the Confirmation Hearing Date to April 21, 2022, the Debtor/Debtor in Possession having amended the plan. Order, Dckt. 73. The court continues the Status Conference to the time and date of the continued confirmation hearing.

JANUARY 27, 2022 STATUS CONFERENCE

The court has issued an Amended Order (Dckt. 61), the amendment necessary in light of counsel for the Debtor/Debtor in Possession noting a typographical error concerning a date, setting the confirmation hearing in the Subchapter V case for March 24, 2022.

No status reports or other pleadings have been filed indicating any issues to be addressed at the January 2022 Status Conference. The court continues the Status Conference to 2:00 p.m. on March 24, 2022, to be conducted in conjunction with the Confirmation Hearing.

DECEMBER 2, 2021 STATUS CONFERENCE

On November 18, 2021, Twisted Oak Winery, LLC, the Debtor/Debtor in Possession, filed a Status Report. Dckt. 39. The information reported includes the following. The Debtor/Debtor in Possession is current on lease payment, the SBA insured loan, payroll, and tax obligations. The Debtor/Debtor in Possession foresees the Plan in this case providing for a 100% dividend for creditors holding general unsecured claims. It is projected that the Chapter 11 Plan will be filed by January 4, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that an agreement has achieved a cash collateral stipulation. There will be amendments to the Schedules, which do not impact the plan.

Counsel for the U.S. Trustee believes that in the past that the principal's credit card was used for business expenses and need to be continued.